

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

United States of America,

Criminal No. 19-cr-338-PJS-KMM

Plaintiff,

v.

ORDER

Fabien Mateso Kitoy

Defendant.

This matter is before the Court on motions for discovery and disclosure filed by the government and defendant Fabien Mateso Kitoy. Based on the motions filed, the Court enters this Order.

1. Mr. Kitoy's Motion for Discovery (ECF No. 18)

Mr. Kitoy's motion for discovery and inspection is **GRANTED** to the extent it seeks discovery and disclosure consistent with Fed. R. Crim. P. 16. The government shall continue to comply with its discovery and disclosure obligations.

2. Mr. Kitoy's Motion for Expert Discovery (ECF No. 19)

Mr. Kitoy's motion for expert discovery is **GRANTED**. The government shall make its expert disclosures at least **three weeks** prior to trial. Any expert disclosures to be made by Mr. Kitoy must be completed **two weeks** before trial.

3. Mr. Kitoy's Motion for Disclosure of Jencks Act Material (ECF No. 20)

Mr. Kitoy's motion for early disclosure of Jencks Act material is **DENIED**. The Jencks Act provides that the government "need not produce Jencks statements prior to a witness' testimony on direct examination." *United States v. Douglas*, 964 F.2d 738,

741 & n.2 (8th Cir. 1992) (citing 18 U.S.C. § 3500(b) and discussing the government's option to make earlier voluntary disclosure, such as through an "open file policy"). The government is strongly encouraged to disclose any Jencks Act material as early as possible.

4. Mr. Kitoy's Motion for Disclosure of Favorable Evidence (ECF No. 21)

Mr. Kitoy's motion for disclosure of favorable evidence is **GRANTED**. The government is obligated to disclose evidence favorable to the defendants as required by *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150 (1972), and their progeny. These cases place an ongoing obligation on counsel for the government to disclose exculpatory evidence and impeachment material to the defendants.

5. Mr. Kitoy's Motion for Disclosure of 404(b) Evidence (ECF No. 22)

Mr. Kitoy's motion for disclosure of Rule 404(b) evidence is **GRANTED**. The government shall disclose any evidence it intends to offer at trial pursuant to Fed. R. Evid. 404(b) at least **three weeks** before trial.

6. Mr. Kitoy's Motion to Retain Rough Notes (ECF No. 23)

Mr. Kitoy's motion for government agents to retain rough notes is **GRANTED**. Disclosure of rough notes is not required by this paragraph.

7. The Government's Motion for Discovery (ECF No. 24)

The government's motion for discovery of information pursuant to Rule 16 of the Federal Rules of Criminal Procedure is **GRANTED**. The defendants shall provide discovery and disclosures as required by the Fed. R. Crim. P. 16.

Date: April 22, 2020

s/ Katherine Menendez
Katherine Menendez
United States Magistrate Judge